IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 395 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

and

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHAKU MURA HARIJAN

Versus

STATE OF GUJARAT

Appearance:

MS BANNA S DUTTA for Appellant.

MR KT DAVE APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

and

MR.JUSTICE A.L.DAVE

Date of decision: 13/11/2000

ORAL JUDGEMENT (Per : MISS JUSTICE R.M.DOSHIT)

This appeal arises of the judgment and order dated 2nd April, 1990, passed by the learned Additional Sessions Judge, Bhuj-Kutch, in Sessions Case No. 7/89. The appellant before this court is the accused. The appellant has been convicted for offence punishable under

section 302 IPC and has been sentenced with RI for life and a fine of Rs.200/-, and further RI for one month in default of payment of fine.

The appellant was charged for committing murder of his wife Bai Gomi. It was alleged that on 13th December, 1988, at around 11-00 O'clock in the forenoon, the appellant committed murder of his wife Bai Gomi in the Sim of the village Kataria, near Adsar lake. It was alleged that he hit Bai Gomi with an axe on her neck and had severed her neck. The appellant was tried by the learned Additional Sessions Judge, Bhuj, in Sessions Case No. 7/89. The prosecution examined the Medical Officer Laljibhai Becharbhai (PW-1) to prove the Postmortem Note (EX-6). The Medical Officer stated that the deceased Bai Gomi had been given three blows on the neck which had severed her carotid artery and the spine. The death had occurred on account of the loss of blood, shock and trauma. The blows given to the deceased Bai Gomi were sufficient to cause death. The prosecution has also examined the complainant Bhachubhai Mayabhai (PW-2) who is the maternal uncle of the deceased Bai Gomi. The said witness is not an eye witness. He had lodged the complaint at the instance of the Sarpanch of the village who insisted that he being the maternal uncle of the deceased Bai Gomi, he should lodge the complaint. He has deposed that Sarpanch Pamabhai Nanjibhai had inquired of the accused in presence of the deponent whether he had killed his wife, and where he had killed his wife. In answer to these questions, the accused had said that he had killed his wife and he led the Sarpanch, the complainant and other village people to the scene of offence. The said witness has not given any other material evidence which can connect the accused to the offence. The confession made by the accused before the Sarpanch Pamabhai in presence of the deponent, can not be said to be voluntary. It should also be noted that the said question was asked by the Sarpanch in presence of many other village people including the deponent Bhachubhai Mayabhai. Such a confession, therefore, can not be believed. The mother of the accused Majibai Mura (PW-3) has also not supported the prosecution. It was alleged that the accused had made an extra judicial confession before his mother. However, she has not

supported this version of the prosecution. In her examination-in-chief, she has stated that the accused had approached her with blood-stained cloths and an axe in his hand. He had told his mother that he had killed his wife Bai Gomi in the river. He had changed his cloths and the witness had asked the accused to inform the Sarpanch at the Panchayat office. However, in cross-examination she has stated that she was tutored by the police; that the accused had informed her that somebody had killed his wife Bai Gomi. In view of this contradictory statements made by the said witness, her testimony can not be said to be reliable. The Sarpanch Pamabhai Nanjibhai (PW-4) has supported the prosecution. He has stated that the accused and his mother had approached him and his mother had stated that the accused had done a wrong. When inquired of the accused, he informed the Sarpanch that he had killed his wife. He had killed his wife because he did not have good relations with her. It was the accused who led the Sarpanch and other village people to the scene of the offence. He was also present when the offending weapon axe was recovered from the accused. He has stood by his evidence in the cross-examination also. PW-5 Bhimabhai Langha is one of the village-men, who had accompanied the Sarpanch and the complainant to the scene of the offence. His evidence is not helpful to the prosecution. The Panch witness-Umedlal Vishanji Thakkar (PW-6) did not support the recovery panchnama of the blood-stained cloths of the accused. He is declared to have turned hostile. The Police Station Officer Mangsing Kishansinh (PW-7) has been examined to prove the FIR (EX-15) The panch-witness Bhailalbhai Mohanbhai (PW-8) has also turned hostile and has not supported the recovery panchnama. The Investigating Officer Kanaiyalal Shankarbhai (PW-9) has also not proved the panchnama except saying that the blood-stained cloths and axe were recovered from the house of the accused. He has not stated whether the muddamal blood-stained cloths and axe were discovered from the house of the accused or were they voluntarily disclosed by the accused. It would, therefore, be not safe to hold that the Muddamal articles, the blood-stained cloths and the axe belonged to the accused or that they were recovered at his instance. In absence of such evidence, the only evidence on record in support of the prosecution is that of Sarpanch Pamabhai Nanjibhai (PW-4). It was before the said witness the accused is stated to have made extra judicial confession of killing his wife with an axe. However, this witness, though reliable, is not supported by any other independent evidence. The extra judicial confession is a weak piece of evidence and unless is

proved to have been made voluntarily and is corroborated by some independent evidence, conviction can not be based solely on such extra judicial confession. As discussed hereinabove, in the present case, the only piece of evidence available to the prosecution is the extra judicial confession made before the Sarpanch Pamabhai Nanjibhai (PW-4). We are of the view that the learned Trial Judge has erred in basing the conviction on this extra judicial confession said to have been made before the Sarpanch Pamabhai Nanjibhai (PW-4). We also find that some foot-marks were found at the scene of the offence, no investigation has been made in respect of the said foot-marks. Had the said foot-marks been examined, probably the presence of the accused could have been proved. As the evidence stands, neither the presence of the accused at the scene of the offence stands proved, nor it is proved that the blood-stained cloths and the axe recovered were those of the accused. It is not proved that the said muddamal articles were recovered from the accused, or at his instance. We find it unsafe to convict the accused on the evidence available on the record. The prosecution has failed to establish the guilt against the accused.

The appeal is allowed. The impugned judgment and order dated 2nd April, 1990, passed by the learned Additional Sessions Judge, Bhuj, in Sessions Case No. 7/89, convicting the accused - appellant for offence punishable under section 302 IPC, and the order of sentence are quashed and set aside. The appellant is acquitted of the charge levelled against him. The appellant be set at liberty forthwith, unless his presence in jail is required for any other offence. The muddamal articles be disposed of as directed by the trial court.

(MS R.M.DOSHIT J)

(A.L.DAVE J)

JOSHI